

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32

ALLIED WASTE SYSTEMS, INC., d/b/a
NEWBY ISLAND RECYCLERY
Employer

and

Case 32-RC-5533

SANITARY TRUCK DRIVERS AND HELPERS,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 350
Petitioner

**REPORT AND RECOMMENDATIONS ON OBJECTION
AND CHALLENGED BALLOT AND NOTICE OF HEARING**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the Petitioner's objection and its challenge to the ballot of Laura Estes to be conducted and, pursuant to that investigation, recommends that the objection be overruled and orders that the challenged ballot be set for hearing.

The Election

The Petition in this matter was filed on October 18, 2007.² Pursuant to a Stipulated Election Agreement approved on October 26, an election by secret ballot was conducted on November 29, in the following unit:

All full-time and regular part-time sort leaders, equipment operators, loader operators, machine operators, baler operators, drivers, maintenance mechanics, and scale house operators employed by the Employer at its recyclery/composting facility located at 1601 Dixon Landing Road, Milpitas, California; **excluding** all other employees, clerical employees, guards, and supervisors as defined in the Act.

The Tally of Ballots served on the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters.....27
Number of void ballots.....0

¹ Hereinafter referred to as the Board.

² All dates hereinafter refer to calendar year 2007.

Number of votes cast for participating labor organization....	13
Number of votes against participating labor organization.....	12
Number of valid votes counted.....	25
Number of challenged ballots.....	1
Valid votes counted plus challenged ballots.....	26

Thereafter, the Petitioner filed a timely objection to the election, a copy of which was served on the Employer by the Region. Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the objection to be conducted and hereby reports as follows:

The Objection

Objection No. 1

The Employer failed to comply with the *Excelsior* rule by omitting the name of eligible voter Virginia Pimentell from the *Excelsior* list.

Virginia Pimentell is employed by the Employer in the position of sorter. As such, she was excluded from the Stipulated Election Agreement, for that agreement, which does not identify sorters as being part of the agreed-upon bargaining unit, specifically excludes all employees not identified in the stipulated unit description. Nonetheless, the Petitioner suggests that Pimentell's omission from the unit description should be excused based on the Petitioner's contention that, at the time it entered into the election agreement, its understanding was that none of the sorters working at the Employer's facility were employed by the Employer, and that the Employer had never advised the Petitioner to the contrary. However, the Petitioner makes no claim that it ever asked the Employer whether it employed any of the sorters working in its facility. Nor has the Petitioner shown, or even claimed, that the Employer misled the Petitioner or concealed from it information regarding Pimentell's employment status. Rather, it appears that during the organizing campaign, the Petitioner simply failed to discover that Pimentell was actually employed by the Employer and, thus, made no attempt to include her in the bargaining unit. In such circumstances, where, by agreement of the parties, the position of sorter was omitted from the unit description, it was not improper for the Employer to omit Pimentell, a sorter, from the voter eligibility list. Accordingly, I recommend that the Petitioner's objection be overruled.

The Challenged Ballot

The Petitioner challenged the ballot of Laura Estes on the ground that, prior to the election, she transferred from her position as a scale house operator to a clerical or administrative position outside the bargaining unit. The challenge to her ballot raises material issues of fact and law which can best be resolved by a hearing.

Accordingly,

IT IS HEREBY ORDERED that a hearing on the challenged ballot of Laura Estes be held before a duly designated Hearing Officer of the National Labor Relations Board.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within fourteen (14) days from the issuance of said report, any party may file with the Board an original and one (1) copy of exceptions to such report, with supporting brief, if desired. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, on the other party to the proceeding and with the undersigned. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

PLEASE TAKE NOTICE that on January 7, 2008, at 9:00 a.m. in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California, and continuing on consecutive days thereafter until completed, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a hearing officer of the National Labor Relations Board upon the aforesaid challenged ballot, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matters.

DATED AT Oakland, California, December 21, 2007.³

/s/ Alan B. Reichard

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5211

³ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the National Labor Relations Board, 1099 14th Street, N.W., Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Report or appended to the exceptions or opposition thereto which a party submits to the Board. Exceptions must be received by the Board in Washington, DC by January 4, 2008. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.